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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 253rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.253/Add.1.

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GE.96-16104 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Croatia (CAT/C/16/Add.6; HRI/CORE/1/Add.32)

1. At the invitation of the Chairman, Mr. Nad, Mr. Veić, Mr. Krapac, Mr. Lovrić, Mrs. Meštrović, Mr. Henisberg, Mr. Toljan, Sočanec, Mrs. Ujević, Mrs. Matešić and Mrs. Briški (Croatia) took a seat at the Committee table.

2. Mr. NAD (Croatia) said that, since attaining independence in 1991, the Republic of Croatia had become a party to a number of international instruments, ratified the two Optional Protocols to the International Covenant on Civil and Political Rights and recognized the powers of the Human Rights Committee under article 41 of that Covenant. The establishment of the rule of law throughout the country had been seriously undermined by the Serbian aggression, with all the well-known consequences. After several years of unsuccessful peace discussions, Croatia had had to undertake two military operations as a result of which it had reconquered a large part of the occupied areas. The resultant change in the balance of power had paved the way for an agreement. The Croatian authorities were firmly resolved to prosecute any person guilty of brutal acts on the territory of the Liberated Republic and to protect all citizens, whatever their ethnic origin. Accordingly, the President of the Republic had granted an amnesty to many Serbs. The Croatian authorities were engaged in peacefully integrating the last occupied part of their territory, demilitarizing the zone and ensuring effective protection of human rights. There were, however, still many displaced persons and refugees, and living conditions in the regions devastated by the war were extremely difficult. The Government had taken a number of measures to reconstruct those regions and to restore trust between the peoples. For instance, it would allow Serbs wishing to do so to return and settle in Croatia, where they would enjoy all the rights granted to members of the 15 other minorities living on the territory. Under the agreements which had been concluded, the Croatian authorities were striving for the reintegration of Eastern Slavonia. They appealed to the international community to help them throw light on the fate of thousands of persons who had disappeared in Croatia. They were collaborating with the International Criminal Tribunal for the Former Yugoslavia and were doing everything in their power to ensure that those guilty of criminal acts were brought before the competent judicial bodies. The Republic of Croatia had high hopes that the Committee would help it to restore full enjoyment of the human rights on its territory. His delegation apologized to the Committee for not having sent its report within the prescribed time-limits but trusted that it would bear in mind the country's special situation in recent years.

3. Mr. BURNS (Country Rapporteur), congratulating Croatia on the commitments it had entered into pursuant to various international instruments, noted that it had not entered a reservation with respect to article 20 and that it had made the declarations provided for under articles 21 and 22. In addition, its initial report complied with the requirements as to form laid down by the Committee.

4. It was regrettable that, even though torture was prohibited under the Criminal Code, it was not expressly characterized as a criminal offence, contrary to the criteria laid down under the Convention. In the Committee's view, there was a difference of a moral kind between torture and the other offences and, unless torture had been defined as a separate crime, a State could not supply data on the cases of torture recorded within its territory since such data were amalgamated with figures for assaults in general. Croatia could not therefore properly perform its obligations under articles 3, 5 and 7 of the Convention.

5. With regard to paragraph 11 of the report, he would be grateful for clarification what appeared to be a contradiction. During hostilities, the Croatian Government had not officially proclaimed a state of war or emergency in order to prevent any restriction of human rights and fundamental freedoms (para. 9 of the report); yet the President had enacted decrees that had temporarily restricted the exercise of some fundamental rights and freedoms (para. 11 of the report).

6. The Committee was gratified that the Republic of Croatia, as the successor to the former Federal Socialist Republic of Yugoslavia, considered itself bound by all the international treaties to which the latter had been party and which were in keeping with its Constitution and legal system. International conventions and treaties, when ratified in accordance with the Constitution, had precedence over internal legislation (para. 12 of the report). He would like to know what the ratification procedure under the Constitution consisted of.

7. The hierarchical structure of the Ministry of the Interior included a disciplinary tribunal which dealt with breaches of discipline committed by police officers. What was the composition of that disciplinary tribunal? He would like to know whether he had understood correctly that the Constitutional Court was empowered to receive complaints from citizens who considered that their constitutional rights had been violated. Also, were the military courts composed of judges appointed according to the normal procedure (para. 19 of the report)?

8. With regard to paragraph 22 of the report and the 40 indictments for crimes against humanity and violations of international law to which it referred, he would like to know the number of Serbian, Muslim and Croatian accused, and would also welcome an explanation concerning the habeas corpus-like remedy, instituted under the Administrative Litigation Act and referred to in paragraph 29 of the report. Further, could torturers invoke superior orders and how many of the police officers who had been the subject of disciplinary measures in 1993 and 1994 had committed acts of torture? While the Committee was pleased to note that the Republic of Croatia complied with the principle of the universal applicability of criminal law, in accordance with article 5 of the Convention, it wondered whether the provisions for preliminary detention referred to in paragraph 81 were compatible with those in paragraph 122 (b). Could a suspect be held incommunicado?

9. As all the signatories of the Dayton Framework Agreement were required to cooperate with the International Criminal Tribunal for the Former Yugoslavia, the Committee would like to know how many arrest warrants had been issued against war criminals in Croatia.

10. Mr. SØRENSEN (Alternate Country Rapporteur) said that the Committee was well aware of Croatia's special situation and would endeavour to establish a frank and constructive dialogue with the authorities.

11. During preliminary detention, certain rights provided important guarantees for the suspect. At what point was the arrested person informed of his right to remain silent and was that information communicated to him both orally and in writing? Could that a person use his own language? It would be useful to have information about the conditions for the exercising the right to enjoy the services of a lawyer as well as the right to inform one's relatives of the arrest and to be examined by a doctor of one's choice.

12. With regard to remedies, was it possible to waive the three-day period (para. 104 of the report) within which an injured person had to file a complaint with the public prosecutor's office, if that person was hospitalized and incapable of bringing the complaint in person owing to the ill-treatment suffered. The report contained very detailed information on the prison population and the penitentiary system and its functions, but did not state whether there was any kind of independent prison inspection system. Also, if a detainee's rights were violated, could he, in addition to following the procedure for submitting a complaint to the warden of the prison as referred to in paragraph 54, write under sealed cover to the deputy for his constituency or refer the matter directly to the Ministry of Justice or the Human Rights Committee? If so, the inclusion of a communication to the Committee against Torture should be envisaged as a possible remedy. In the table following paragraph 57, "Chemicals" appeared as one of the instruments of restraint used in jails. It should be specified whether that meant tear-gas. It was not clear whether the health-care services provided in penitentiaries (para. 99) were responsible to the Ministry of Health and not to the Ministry of Justice and whether there was a law or other provision concerning persons who suffered from mental disorders and, if so, whether it also applied to detained persons.

13. While training on the prohibition of torture for members of the police forces was, of course, laudable, it was just as necessary to provide training for penitentiary staff, prosecutors and judges in human rights in general and with special problems of torture in particular. Medical staff, and doctors in particular, should also receive such training, especially to familiarize themselves with the conduct of victims of torture, who after their ordeal were afraid and mistrusted police officers, but also other officials on the prison staff, judges and even doctors. In the absence of specific training for members of all the professions that might come into contact with the victims of torture, the United Nations could perhaps provide technical assistance in that area.

14. Article 14 of the Convention was of paramount importance particularly in the case of a country emerging from a war. A stable and lasting democracy was inconceivable if the victims of brutality were unable to secure compensation.

Paragraph 115 stated that, in the event that an unjustified sentence or term of imprisonment was the subject of reports in the mass media that were damaging to a person's reputation, that person had the right to moral satisfaction in the form of a denial published in the press or some other media. Any abuse of that kind should give rise to moral satisfaction. As to financial compensation, the question was whether it could be granted only on a complaint made by the victim or whether the court could grant it automatically if it established that a police officer was guilty of ill-treatment of the person concerned and, furthermore, whether it was the State or the guilty party that paid the compensation. Medical rehabilitation was also of great importance in a country like Croatia, which had just had a war, and it should be provided by properly trained professionals. As a mark of its wish to ensure such rehabilitation, the Croatian Government should endeavour to make the Centre for the rehabilitation of victims of torture, in Zagreb, better known, ensure that it was working properly, and consider paying a contribution - even a token contribution, given Croatia's current difficulties - to the United Nations Voluntary Fund for Victims of Torture.

15. While the Committee against Torture had no mandate to carry out a detailed study of and express an opinion on matters relating to the liberation of the occupied territories, it was bound to repeat that, in order to ensure a stable democracy, a State must punish those responsible for acts of torture. That rule had again been reaffirmed by the Human Rights Committee at its fifty-second session. The information provided by some NGOs referred to many serious and brutal acts, but the Committee against Torture did not doubt that the Republic of Croatia would prosecute all the guilty parties. It awaited with interest the results of the investigations into those cases, which could be dealt with in the second periodic report.

16. Mr. ZUPANCIC said he noted that the Croatian criminal procedure provided for only a very short period in custody, that was a good thing, since most torture occurred during that time, generally at police stations when the suspect had no contact with the outside world. It would be very useful to know what precisely the constitutional rights enjoyed by defendants and suspects in Croatia were, and in particular whether persons could appeal directly to the Constitutional Court should their rights be violated at the criminal proceedings stage. Again, the Croatian Constitution contained a provision whereby illegally obtained evidence was not admissible. Could the figure of 2 per cent mentioned in a study carried out by Zagreb University on the proportion of cases resulting in violations of those constitutional rights be regarded as realistic? He would also like to know what the method of excluding illegally obtained evidence was and in particular whether police reports drawn up at the time of custody remained on file or whether they were withdrawn before the file was forwarded to the examining magistrate.

17. As to the characterization of torture as a crime, paragraph 14 of the report stated that torture and similar acts were not defined as explicit criminal acts but that a number of acts were dealt with under special provisions. It was encouraging to see that, under those provisions, torture appeared to include mental suffering, in accordance with article 1 of the Convention, though that article was in fact far more precise. Paragraph 21 of

the report listed the sanctions that could be imposed by the criminal courts, but made no reference to capital punishment. If there was no capital punishment in Croatia then that was to be welcomed, and the Committee would like to have confirmation that that was indeed the sense of paragraph 21.

18. Mrs. ILIOPOULOS-STRANGAS, reminding members of the content of article 3 of the Convention and commenting on paragraphs 68, 69 and 71 of the report, which referred to the expulsion of foreign nationals and the refoulement of refugees from Bosnia and Herzegovena, said she would like to know whether the Croatian authorities had made sure that, even if the situation of the persons concerned was irregular, they had not run the risk of being subjected to torture in the country of destination. She would also like to know whether Croatia had adopted legislative provisions to ensure the application of article 3 of the Convention and, in particular, whether there was a law on foreigners consistent with the requirements of that article.

19. Mr. BIKIS said that, generally speaking, the constitutional and legal framework established in Croatia was conducive to ensuring the primacy of the rule of law and the protection of human rights. The establishment of such a framework was not, however, an end in itself. What mattered was effective protection of human rights, particularly the rights set forth in the Convention against Torture, at all times and in all circumstances but particularly at times of crisis. Notwithstanding the extent of the difficulties which had confronted Croatia since 1991, the information provided by certain non-governmental organizations, and by Human Rights Watch and Amnesty International in particular about the very many infringements of the human rights in Croatia was bound to cause concern. Human Rights Watch, in its world report for 1996, stated in particular that the Croatian army offensives against western Slavonia and Krajina in May and August 1995 respectively had resulted in the displacement of thousands of Serbs from Croatia and numerous human rights violations after Croatia had taken over control of those two regions, that violations of civil and political rights continued in Croatia, and that they were in the main attributable to the military. Not to dwell on the various statements in NGO reports, it should be emphasized that they attributed the widespread brutality to the armed forces and the Croatian police and also to persons who cooperated with the army or acted independently (mass executions, serious acts of torture, arson, resorting to rape in ethnic cleansing, confiscation of property, burning down of houses). Croatia's report painted a very different picture and it would therefore be interesting to know whether the Croatian Government was prepared to hold an independent inquiry into the allegations made in the documents in question and report to the Committee on the findings.

20. Mr. REGMI said he too considered that the definition of torture laid down in article 1 of the Convention should be incorporated in the criminal law of States parties, along with the provisions on compensation, and that all acts of torture should constitute offences under criminal law and be punished accordingly. Paragraphs 40 to 42 of the core document (HRI/CORE/1/Add.2) described the composition and functions of the Croatian Constitutional Court. In that connection, he wondered about the respective powers of that Court and the Supreme Court, since the Constitutional Court could apparently supervise

the activity of political parties and ban any party that encouraged or had recourse to violence. Was the Constitutional Court an organ of the Executive or the Judiciary and what actually were its powers so far as the application of the Convention was concerned?

21. Paragraph 123 of the report stated that firearms could be used in extreme and strictly defined cases where there were no other means for dealing with the situation. That did not seem to be consistent with article 16 of the Convention. It would also be useful to know whether there was any law in force in Croatia which stipulated that no act of torture could be justified or excused on the ground of superior orders.

22. Under the terms of article 14 of the Convention, any victim of an act of torture should be able to obtain compensation. In such cases was it only the victim who was authorized to seek compensation or could a third party - for instance, a non-governmental organization - do so on the victim's behalf? What was the maximum amount a victim could claim in compensation?

23. Various reliable sources had reported numerous arbitrary executions of which the government forces in Croatia were apparently guilty. Political assassinations had also been reported as well as brutal acts committed against members of the Serbian minority in Croatia. The Croatian Government must put an end to such human rights violations as quickly as possible and hold inquiries so that the guilty persons could be tried and punished.

24. Mr. CAMARA said that he had learned with much interest of the measures taken by Croatia to ensure the protection of human rights. In his view, it was important to consider not only the negative aspects of the report but also the positive ones. He wished to be associated in Mr. Regmi's question concerning article 2, paragraph 3, of the Convention and would ask whether the notion of aiding and abetting on instructions existed under Croatian criminal law. It should be the concern of States parties to prosecute not only those who committed acts of torture but also those who instigated them and in particular superiors who had given the order to commit such acts.

25. Mr. YAKOVLEV, remarking on the high quality and detail of the Croatian Government's report, said that he would merely echo Mr. Burns' question regarding the presidential decree on the application of criminal procedure in times of war or of the imminent threat of war and the decree on the organization and functioning of the judiciary in wartime. The two decrees appeared to have serious implications and it would be important to know the extent to which they were applied. Having regard in particular to the information received concerning ill-treatment inflicted by the Croatian police in the early stages of custody. Was there any connection between such actions and the exceptions to the exclusionary rule provided for under those decrees? He would also like to know whether the two decrees were permanent or whether they were, in principle, of limited duration.

26. Mr. GONZALEZ POBLETE joined with those members of the Committee who had expressed concern about the application of the exclusionary principle laid down in article 15. Although paragraphs 35 and 119 of the report referred to the question, it would be interesting to know how the exclusionary rule was applied in practice in Croatia. In particular, if a detainee claimed that he

had made a confession under torture, was his complaint examined at the same time as the case for which he was being prosecuted? If the detainee complained to the judge who was investigating the main case, what would that judge do? Would he investigate both cases and, if he found that a confession had indeed been extracted under torture, would he continue the investigation into the main offence or would he dismiss the charge? If, on the other hand, he considered that the allegations of torture were unfounded, could the plaintiff renew his allegations before the court hearing the case for which he was being tried? If so, could the court try both cases simultaneously, bearing in mind the territorial jurisdiction that operated in Croatia in criminal matters, or would the allegations of torture be brought before another court? If the investigation into the allegations of torture took time, would the proceedings relating to the main offence be delayed as a consequence?

27. The CHAIRMAN said that he had just one point to raise: paragraph 86 of the report stated that, as extradition was regarded as a decision of the Government, the Republic of Croatia had adopted the system of the so-called "judicial veto"; the meaning of that expression was not clear and could obscure a reality that was incompatible with article 7 of the Convention.

28. Mr. NAD (Croatia), thanking members of the Committee, said that, at the next meeting, he would endeavour to reply, to the best of his ability, to the questions raised.

29. The CHAIRMAN, thanking the Croatian delegation, said that the Committee awaited its replies with interest.

30. The Croatian delegation withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 11.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

31. The CHAIRMAN said that the Committee would have before it at a later meeting document CAT/C/XVI/Misc.2, concerning the obligation on States parties to submit a report. It would also have to consider the letter dated 16 November 1995 received from the Italian representative, forwarding the additional information requested when Italy's report had been considered in April 1995, as well as observations on the Committee's conclusions.

32. Mrs. ILIOPOULOS-STRANGAS said it had been agreed at the previous session that Mr. Gil Lavedra, a member of the Committee at the time, and she herself would prepare a draft reply to the Italian representative. She asked whether she should submit the draft reply to the Committee.

33. The CHAIRMAN said that that would be extremely useful.

34. Mrs. ILIOPOULOS-STRANGAS and Mr. PIKIS said that they had a few specific suggestions to make concerning the Committee's working methods.

35. The CHAIRMAN said he believed that the matter had been mentioned at the informal meeting the Committee had held at the beginning of the session. It would, however, certainly be possible to revert to it at a forthcoming meeting. He reminded the Committee that it should also appoint one of its members to follow the work of the Human Rights Committee and, if necessary, to report back to it, since Mr. El Ibrashi, who was no longer a member of the Committee, had been responsible for that task.

36. Mr. SØRENSEN said that the Committee should also hear the reports of those members who followed the work of other bodies concerned with the protection of human rights. For his own part, he would like to comment on certain aspects of the work of the Committee on the Rights of the Child that were of interest to the Committee against Torture.

37. In answer to a question by Mr. CAMARA, the CHAIRMAN said that the Committee would hear those members wishing to report to it on the work of other bodies at the same time as it appointed one of them to replace Mr. El Ibrashi.

38. Mr. SORETE supported by Mrs. TAVERNIER SORETE said that if any new members showed interest in the work of other bodies concerned in the protection of human rights, entrusting them with the task of ensuring their follow-up would be a good way of associating them effectively and rapidly in the Committee's work.

39. The CHAIRMAN said that that possibility should indeed be envisaged.

The first part (public) of the meeting rose at 12.20 p.m.

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 254th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 May 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of China (continued)

Initial report of Croatia (continued)

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GE.96-16112 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of China (continued) (CAT/C/20/Add.5)

1. At the invitation of the Chairman, the delegation of China took places at the Committee table.

2. Mr. BURNS (Country Rapporteur) read out the conclusions and recommendations of the Committee on the second periodic report of China:

"Conclusions and recommendations of the Committee against Torture

CHINA

The Committee considered the second periodic report of China (CAT/C/20/Add.5) at its 251st and 252nd meetings, on 3 May 1996 (see CAT/C/SR.251 and 252) and adopted the following conclusions and recommendations:

A. Introduction

The second periodic report of China, dated 15 February 1996, was due on 2 November 1993 but, since China had presented a supplementary report dated October 1992, the timing of this report is quite satisfactory to the Committee against Torture. The second periodic report of China follows the Committee's guidelines and meets them satisfactorily. The Committee also thanks Ambassador Wu Jianmin for his most enlightening verbal introduction to the report and for the way in which he and his delegation responded so constructively to the questions asked.

B. Positive Aspects

1. The reforms contained in the amendments to the Criminal Procedure Law to take effect in 1997 are an important step towards developing the rule of law in China, and towards that country being able to meet its obligations pursuant to the Convention against Torture.

2. There are instances reported of police officials being prosecuted and convicted for acts of torture in China, including Tibet.

3. The various steps taken by the Ministry of Public Security, pursuant to its notice of January 1992, to educate personnel on the prohibition on torture are welcome.

4. The provision of effective administrative and criminal compensation to victims of abuse is a most welcome development.

5. The Committee notes with pleasure the response of the Ambassador that 'heads of cells and trusties' in prisons, as alleged by some non-governmental organizations do not exist in China.

C. Factors and difficulties impeding the application of the provisions of the Convention

The sheer size of the task confronting China in policing and administering a huge land mass with 1.2 billion people at a time of economic and social reconstruction.

D. Subjects of concern

1. The Committee is concerned that, according to information supplied by non-governmental organizations, torture may be practised on a widespread basis in China.

2. The failure to incorporate a crime of torture into the domestic legal system in terms consistent with the definition in article 1 of the Convention.

3. The allegations drawn to the attention of the Committee by non-governmental organizations that torture occurs in China in police stations and prisons in circumstances that often do not result in investigation and proper resolution by the authorities.

4. The assertions by some non-governmental organizations that the Procuratorate has yet to establish its authority over the police, security and prison services when dealing with allegations of torture and maltreatment.

5. Some methods of capital punishment may be a breach of article 16 of the Convention.

6. The assertions by non-governmental organizations that the special environment that exists in Tibet continues to create conditions that have resulted in the alleged ill-treatment and even death of persons held in police custody and in prisons.

7. The failure to provide access to legal counsel to persons at the earliest time of their contact with the authorities. Some non-governmental organizations have alleged that incommunicado detention is still prevalent in China.

8. Finally, the number of deaths reported to the Committee apparently arising out of police custody is of concern to the Committee.

E. Recommendations

1. That China enact a crime of torture in terms consistent with article 1 of the Convention against Torture.

2. That a comprehensive system be established to review, investigate, and effectively deal with complaints of ill treatment by those in custody.

of every sort. If the Procuratorate is the body, it should be given the necessary jurisdiction to carry out its functions even over the objections of the organ that it is investigating.

3. Methods of execution of prisoners sentenced to death should be brought into conformity with article 16 of the Convention against Torture.

4. Conditions in prison should be brought into conformity with article 16 of the Convention against Torture.

5. Access to legal counsel should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. Access to the family and to a medical doctor should also be accommodated.

6. China is invited to consider cooperating with the Rehabilitation Centre for Torture Victims in setting up a torture victims rehabilitation centre in Beijing or some other large centre in that country.

7. China should continue with its most welcome reforms to its Criminal Procedure law and continue to train its law-enforcement personnel, procurators, judges and doctors to become professionals of the highest standing.

8. China is invited to consider withdrawing its reservations to article 20 and making declarations under articles 21 and 22 of the Convention against Torture.

9. An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the Convention against Torture that the Committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China."

Mr. NG Jianmin (China) said that he had listened carefully to the conclusions of the Committee and regretted that, in the section entitled "Subjects of concern", it had relied on information provided by non-governmental organizations (NGOs). Some NGOs were biased, since they drew their information from so-called "dissidents" who made their living out of accusing and blaming China. If the conclusions of the Committee were based on misinformation, they could not be considered objective. He would convey the Committee's recommendations to his Government.

4. The CHAIRMAN, having noted the remarks of the representative of China said that the conclusions of the Committee drew attention to favourable developments in China as well as to information and allegations it had received from non-governmental sources. He thanked the members of the delegation of China for the spirit of frank cooperation in which the dialogue had been conducted.

5. The delegation of China withdrew.

The meeting was suspended at 3.25 p.m. and resumed at 3.35 p.m.

Initial report of Croatia (continued) (CAT/C/16/Add.6; HRI/CORE/1/Add.42)

6. At the invitation of the Chairman, the delegation of Croatia took places at the Committee table.

7. Mr. KRAPAC (Croatia) said that his Government was well aware of the distinction between law and practice. The report provided a fair account of how the terms of the Convention were reflected in Croatian legislation, while at the same time attempting to describe the difficulties that his country had experienced in achieving their implementation.

8. There were three considerations that must be borne in mind: first of all, as in all former socialist States that had undergone decades of authoritarian rule, old habits ran deep and the protection of individual rights often ranked lower than other social measures. Secondly, Croatia had experienced greater problems in its transition to democracy than any other former socialist State, because of the war that had been fought on its soil. That war had brought about profound changes in the public administration; many of Croatia's officials, who were young and newly employed, had to be educated in their duties and responsibilities toward citizens. Thirdly, apart from the war situation, there were no signs that torture - to cite the worst form of ill-treatment - was systematically practised in Croatia. As his Government well understood, the protection of human rights required not only legislation but adherence by its citizens to the rule of law.

9. Croatian law did not, in fact, identify torture per se as a crime. It did, however, recognize as crimes all of the aspects of torture covered by the Convention. For example, aggravated forms of murder, which carried far more severe penalties than simple murder, encompassed aspects of the definition of torture set out in the Convention. He agreed that serious consideration should be given to enacting a crime of torture per se, and would put the suggestion to the committee that was currently in the process of rewriting Croatian criminal law.

10. In January 1996 the President of Croatia had announced that three presidential decrees would be repealed during the current year; it thus appeared that presidential decrees would soon cease to be an issue. In any event, his delegation would provide further information on the matter to the Committee at a later stage.

11. A provision of the Code of Criminal Procedure stipulated that a person whose legal rights and freedoms had been breached could himself institute proceedings against the alleged perpetrator, with full prosecutorial powers, including the right to be assisted by counsel (in certain cases at the public expense). He must first, however, submit his complaint to the Ministry of Justice, and attempt to settle out of court. The awarding of compensation was mainly within the purview of the courts.

12. Croatia had adopted a system of administrative courts modelled on those of Austria and Germany. The relevant law contained a special provision which, in some ways, resembled habeas corpus: if an individual considered that an

action by the executive had violated his rights, he could complain to an administrative court, but only after the executive had rendered a final decision and if no other judicial remedy existed.

13. The defence of superior orders as a justification for torture did not exist. Under the by-laws that regulated proceedings, any police or army officer receiving an order he thought unconstitutional must request that the order be given in writing. A subordinate who subsequently obeyed such a written order was held criminally responsible for his act.

14. Under the Code of Criminal Procedure, a person could be arrested only on well-founded suspicion of having committed an offence. In addition, grounds for detention such as risk to life, obliteration of evidence or risk of recidivism must exist. The arrested person must, in every case, be brought promptly before an investigating judge, who informed the suspect of the charges against him and his right to a defence counsel. The findings of the judge's formal interrogation were acceptable as evidence but those of informal police inquiries were not. Thus no evidence obtained through police ill-treatment or torture could be used as evidence. The victim could report such behaviour to the public prosecutor, who was obliged to prosecute if there was a well-founded suspicion of police wrongdoing.

15. If the public prosecutor did not act, the victim had the option of initiating an action. Such actions, which tarnished the image of the public prosecutor concerned, were initiated in about 2 per cent of all cases.

16. Croatia was the only State of the former Yugoslavia to have extradited one of its citizens to appear before the International Criminal Tribunal for the Former Yugoslavia in The Hague. The Croatian Parliament had just passed a constitutional act on cooperation by the Republic of Croatia with the Tribunal.

17. Mr. SOČANEC (Croatia), replying to questions by Mr. Pikis and Mr. Regmi, said that his Government had not had access to the United Nations Protected Areas (UNPAs) until August 1995 and could not be held responsible for events in those territories between 1991 and August 1995. During the liberation of the territories in August 1995, the police force and army units had respected international humanitarian law. The Government deeply regretted the criminal acts committed after the operation by a number of individuals or groups outside the control of the authorities. The regular and military courts were currently trying 1,005 persons (868 Croats, 39 Serbs and 98 members of other ethnic groups) for such acts.

18. There had been no further cases of arson since October 1995 and the human rights situation in general had been improving, as evidenced by the Secretary-General's report on Croatia to the Security Council (S/1996/109) of 14 February 1996.

19. Mr. NAD (Croatia), replying to a question by Mrs. Iliopoulos-Strangas, said that Croatia had accommodated over 380,000 refugees in the last five years. When refugees from Bosnia and Herzegovina accommodated in

United Nations Protected Areas left to receive medical treatment or for other reasons, the Government had been unable to admit permanently the large numbers involved and 1,149 persons had had to be sent back to the UNPA areas.

20. Mr. LOVRIĆ (Croatia) said that military courts, which had been set up in Croatia in December 1991 by a presidential decree, came under the supervision of the Ministry of Justice and the judges were not military personnel but experienced members of the judiciary. They were thus not military courts in the traditional sense of the term and appeals lay to the regular civil courts. The Government had recently taken steps to abolish the military courts.

21. Mr. NAD (Croatia) said that tear gas had been used by the police on three occasions to restore law and order at football matches. Nobody had suffered bodily injuries.

22. Mr. VEIĆ (Croatia) said that the judges of the disciplinary court that investigated police conduct in Croatia were appointed by the Minister of Internal Affairs. Convicted police officers could appeal to a superior court. A police code of ethics was being prepared and would help to enhance awareness of human rights.

23. Mr. HENISBERG (Croatia) said that the provision of treatment for victims of torture was a key health-care problem in Croatia. Over 6,600 formerly detained persons and a considerable number of displaced persons and refugees had suffered physical or mental injuries of varying degrees of severity.

24. Like other health-care personnel, medical personnel working in prisons were required to respect medical ethics. Prisoners requiring special treatment were referred to the appropriate specialized institutions, where they were treated without discrimination. They included persons with mental disorders acquired under torture during the period of Serb aggression, who were transferred to psychiatric institutions.

25. Special training for physicians in caring for torture victims was provided mainly at the undergraduate level. The disaster medicine course covered psychosocial and psychiatric support for victims of torture and rehabilitation. Medical students also received training in human rights. Financial and other assistance from the international community would be welcome to help enhance such activities and establish special rehabilitation centres for victims of torture.

26. Ms. MEŠTROVIĆ (Croatia) said, in answer to a question by Mr. Regmi, that the Constitutional Court had jurisdiction over the activities and programmes of political parties. A party could be banned if it threatened by violent means the constitutional order or territorial integrity of Croatia. No party had so far been banned. About 60 parties were registered with the Ministry of Public Administration and only one application for registration had been refused. That case was currently before the Administrative Court.

27. Mr. KRAPAC (Croatia) said he agreed with Mr. Sorensen that an arrested person had four fundamental rights. Such a person had to be brought promptly before the investigating judge whose duty it was to inform the person of those rights. The Code of Criminal Procedure provided that an arrested person could

request that his or her relatives or friends be informed of the detention. The relevant provision did not explicitly say that persons in custody must have access to a telephone, but that was implicit in the provision.

28. The court would appoint a defence counsel ex officio, if someone was involved in a complicated case or serious crime and was unable to pay for a lawyer and, in other cases an application could be made to the court for the appointment of counsel. In practice, the courts were normally fairly receptive to such requests.

29. The three-day deadline for submitting a complaint of ill-treatment to the public prosecutor could be extended if the person concerned had been badly injured and was in hospital, for example. If a complaint was lodged, the public prosecutor was obliged to initiate action.

30. As far as the exclusion of evidence was concerned, he had already pointed out that a statement extorted by torture was inadmissible as evidence in a trial and had to be removed from the case file. That was an effective way of ensuring that the judges could not be influenced by information obtained through torture.

31. The death penalty had been abolished in Croatia in 1989 and had not been reinstated, even during the war. Moreover, Croatia had adhered to the Optional Protocol.

32. The eight or nine restrictions on criminal proceedings introduced by presidential decree did not relate to the subject-matter of concern to the Committee and were designed merely to expedite fully fledged proceedings and to widen judges' competence in criminal cases. The fundamental right of defence was not restricted in summary proceedings. The only difference was that no extensive judicial investigation was conducted before the trial. At the appeal stage, the parties no longer had to appear in court and the court could rule on the case in camera.

33. The principle of aut dedere, aut punire, or rather aut dedere, aut judicare, did exist both in the extradition agreements Croatia had signed and in Croatian domestic law.

34. Mr. NAD (Croatia) said that, in 1995, 62,000 crimes had been recorded, including 213 murders. The solution rate for murders was 94 per cent. Some cases were still being investigated and the files would not be closed until the guilty parties had been captured. Croatia was open to visits from international organizations and was grateful for international assistance in apprehending war criminals.

35. Mr. YAKOVLEV asked whether it was true that the disciplinary court was part of the hierarchical structure of the Ministry of Internal Affairs and whether a person could lodge a complaint of unlawful arrest with the investigating judge.

36. Mr. VEIC (Croatia) said that the disciplinary court and criminal court were separate entities. If a police officer exceeded his authority, he had to answer to a disciplinary court, but his criminal liability would be the

subject of separate proceedings before a criminal court. It was thus possible for a disciplinary court to dismiss a police officer who would subsequently have to be tried by a criminal court. Although the disciplinary court was a police body, its judges were appointed by the Minister of the Interior and were trained lawyers.

37. Mr. KRAPAC (Croatia) said that a victim of police ill-treatment could lodge a complaint with the public prosecutor or investigating judge. If the investigating judge received such an allegation, he was obliged to have the victim examined by a doctor and to send a report to the public prosecutor who had to decide whether there were grounds for suspecting that a criminal offence had been committed.

38. Mrs. ILIOPOULOS-STRANGAS said that she would like to know whether Croatia had specific legislation applicable to aliens and, if so, whether such legislation was in keeping with article 3 of the Convention. She asked whether the cases of persons who had been expelled had been dealt with individually and whether the requirements of article 3 had been met.

39. Mr. MAD (Croatia) said that Croatia did have an aliens law, according to which the case of every alien who was unlawfully present in Croatian territory, or who broke the law, was heard and decided individually by the relevant court.

40. Mr. CAMARA asked whether the offence of incitement existed in Croatian law.

41. Mr. KRAPAC (Croatia) said that the Penal Code provided that any person guilty of incitement to commit an offence was punishable as if he had committed it himself. Similarly anyone who deliberately aided and abetted the commission of an offence was also punishable as if he himself had committed it.

The public part of the meeting was suspended at 5.10 p.m. and resumed at 5.45 p.m.

42. Mr. BURNS (Alternate Country Rapporteur) read out the conclusions and recommendations of the Committee on the initial report of Croatia:

"Conclusions and recommendations of the Committee against Torture

CROATIA

The Committee considered the initial report of Croatia (CAT/C/16/Add.6) and its 253rd and 254th meetings on 6 May 1996 (see CAT/C/SR.253 and 254) and adopted the following conclusions and recommendations.

A. Introduction

The initial report of Croatia, dated 29 January 1996, was due on 7 October 1992 but the events of insecurity in Croatia from 1991 explain why this report is late. This initial report and the core report on

Croatia follow the Committee's guidelines and meet them satisfactorily. The Committee thanks the delegation of Croatia for its introductory remarks.

B. Positive aspects

The constitutional and other legal safeguards against torture and cruel or unusual treatment or punishment are particularly well-developed in Croatia.

The commitment of Croatia to all international human rights is reflected in the country's accession to the various human rights treaties. It is particularly noteworthy that Croatia has not expressed any reservations concerning article 20 and has made declarations under articles 21 and 22 of the Convention against Torture.

The Croatian Government has undertaken investigation and prosecution in cases of alleged torture and ill-treatment arising out of the events of 1995 and its aftermath.

The support of Croatia for the rehabilitation of the victims of violence that took place in the country between 1991 and the end of 1995.

C. Factors and difficulties impeding implementation

The situation of insecurity and loss of civil oversight over parts of Croatia between 1991 and the end of 1995.

The social and economic consequences of the events referred to in section A, together with the costs of reconstruction and reintegration of large portions of the population into the wider society.

The refocusing of social attitudes on to human rights rather than on to State rights, in a country where for 45 years the opposite was the norm.

D. Subjects of concern

Information of serious breaches of the Convention from reliable non-governmental organizations indicates that, in the wake of the events of 1995, serious acts of torture were perpetrated by Croatian officials, particularly against the Serb minority. There is no defined crime of torture in the domestic law of Croatia.

E. Recommendations

That Croatia enact a crime of torture in terms consistent with article 1 of the Convention against Torture.

That Croatia ensure that all allegations of torture or cruel or unusual treatment or punishment arising out of the events of 1995 and its aftermath be vigorously investigated by an impartial, independent commission, and that the results of such investigation be reported back to this Committee.

That a vigorous programme of education of police, prison, medical, prosecution and judicial personnel be undertaken to ensure that they understand their obligations pursuant to the relationship between the domestic law of Croatia and the international human rights regime that Croatia has acceded to.

The Committee urges Croatia to continue to cooperate with the War Crimes Tribunal for the Former Yugoslavia to ensure that alleged war criminals within its jurisdiction are brought to justice, pursuant to the Dayton Peace Accord.

Individual claims of violations of the constitutional rights of defendants in pre-trial detention should be justiciable by an effective judicial authority.

That, in the second periodic report, a detailed account of the way in which Croatia complies with the provisions of article 3 of the Convention against Torture be included.

That Croatia's police and judicial authorities pay special attention to the implementation of the existing legal guarantees of a constitutional and procedural nature."

43. Mr. NAD (Croatia) said he hoped that the members of the Committee would understand that Croatia was a young country and was currently in the process of drafting legislation to regulate all the matters that had been mentioned.

44. His delegation fully accepted the Committee's conclusions and recommendations, and replies to them would be included in the second periodic report of Croatia.

45. The CHAIRMAN, having thanked the representative of Croatia for his statement, said that the Committee's role was not to accuse or reprimand the States parties but to help ensure that the Convention was implemented. It was essential that all the obligations assumed under the Convention were honoured.

The meeting rose at 6.05 p.m.

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 255th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.255/Add.1.

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GE.96-16136 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Malta (CAT/C/12/Add.7)

1. At the invitation of the Chairman, Mr. Quintano and Mrs. Aquilina (Malta) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Malta and invited it to present the initial report of Malta.

3. Mr. QUINTANO (Malta) began by apologizing to the Committee for Malta's delay in submitting its initial report, which was due solely to shortage of staff.

4. In the previous five years, Malta had made great efforts to discharge all its obligations under the international instruments to which it was a party. The adoption in September 1995 of a new regulation governing prisons, most of whose provisions were now in force, demonstrated that commitment. The regulation was designed to instil a sense of discipline and responsibility in prisoners while they were serving their sentence without undermining their dignity or the respect a person deserved. As soon as a person was put in prison, a comprehensive file was compiled so that the prisoner could be dealt with at all times according to his or her personal situation. Strict segregation of men and women, juveniles below 21 years of age and adults, short-term and longer-term prisoners had been introduced. Particular attention was paid to prisoners' material welfare. A doctor visited prisons daily, dental care was available and prisoners could practise their religion. Reasonable punishment was meted out to prisoners with disciplinary problems, again without undermining his or her dignity. The Prison Board was responsible for ensuring that the treatment of prisoners and prison conditions and administration were up to standard. A total of LM 100,000 had been allocated for the overhaul and modernization of prisons in 1996. A new unit to house young people would be set up and a centre for drug addicts had been opened in October 1995 to try and rehabilitate all prisoners addicted to drugs. The importance attached to training and public information had prompted the holding of an "open day" in 1993. Representatives of the press had been able to move freely about the prisons and talk with staff and prisoners.

5. Since the Convention against Torture had come into force there had been no allegations of torture, and the only alleged ill-treatment dated back to before the Convention had come into force.

6. A new code governing the questioning of prisoners had been adopted in April 1996. It was posted in all police stations and places where prisoners were likely to be questioned, and everyone was free to consult it. Article 2 mirrored article 658 of the Penal Code, which stated that confessions must not be extracted by force. The person in charge of the questioning always had to give his or her name and register how long the questioning had lasted and any suspension. The detainee read the statement he or she had made and could make changes. People could not be questioned at night, except when absolutely

necessary. The questioning had to stop if the suspect who always had to be seated, showed signs of extreme fatigue. Eight hours' uninterrupted sleep, regular meals and breaks every two hours were obligatory. There were also special directives for the questioning of a disabled or particularly vulnerable person. A person who did not belong to the police, preferably one of the parents, had to be present during the questioning of children under 16 years of age, and it was prohibited to arrest a young person in an educational establishment. One particularly important element of the new code was that any behaviour that could be construed as degrading treatment was not only prohibited, it could be dealt with as an offence under article 139 A of the Penal Code and carried the punishment of nine years' imprisonment.

7. To stamp out ill-treatment, staff had to be made aware of human rights issues. Police officers, lawyers and doctors were therefore given special training. The curriculum of the Police Academy included a course specifically dealing with human rights issues. The Public Service Commission took disciplinary measures against any police officer violating the provisions prohibiting ill-treatment.

8. There were no statistics in the report since no charges of ill-treatment had been brought, nor had any foreigners been extradited to countries where they were likely to be tortured. On 20 March 1996, Malta had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. There had been no requests for assistance under article 9 of the Convention.

9. The Committee could rest assured of the utmost importance which Malta attached to its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He would be pleased to do what he could to answer all the questions that members might wish to ask.

10. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) welcomed the positive changes that were taking place in Malta and its firm commitment to human rights. Even though the report was excellent, several questions remained. First of all, where did the Convention stand in the hierarchy of internal legislation? And why did the Constitution prohibit inhuman or degrading treatment or punishment without referring specifically to torture?

11. With regard to paragraph 28 of the report, she asked whether solitary confinement was always simply a disciplinary measure or whether it could be ordered during police custody or pre-trial detention. She asked for information on the composition of the Prison Board referred to in paragraph 35 of the report. Paragraph 41 stated that judges were appointed by the President acting in accordance with the advice of the Prime Minister. Was such advice discretionary or based on the results of a competition, for example? Additional information on judges' training should also be provided. With regard to the right to life, were the exceptions provided for in article 33 of the Constitution of Malta in line with the general principle of proportionality?

12. Although the adoption of new article 139 A of the Penal Code was welcome, she asked why the concept of torture was not expressly included in the article.

13. With regard to the application of article 3 of the Convention, the report stated that a person could invoke the European Convention on Human Rights, but was less precise when it came to the question of expulsion, return (refoulement) or extradition than was the Convention against Torture. She also asked if there were any remedies in the case of an expulsion order from the Minister responsible for immigration and if legal assistance was available in such cases.

14. She stressed the importance of training for medical staff which was not mentioned in paragraph 70 of the report concerning implementation of article 10 of the Convention.

15. Mr. YAKOVLEV (Alternate Country Rapporteur) endorsed the questions raised by the Country Rapporteur but wished to add one last question on the basis of information from non-governmental organizations (NGOs). The information related to a specific incident involving approximately 60 Sudanese nationals who had been expelled from Malta, where they were temporarily present on the basis of a transit visa issued by the Maltese Embassy in Libya, and who had refused to board an aeroplane bound for the Sudan for fear of persecution. The refugees had been expelled to Libya by boat without any serious investigation of their fears. Although he did not want to give credence to complaints of that kind automatically, he believed that such situations, which were not uncommon, should be examined closely. Clarification of developments in that case would therefore be welcome.

16. Mr. BURNS asked whether Malta had an ombudsman or equivalent institution and whether the remedy of habeas corpus existed. In the case of proven ill-treatment, was compensation paid automatically or did the victim have to go to court? Details on the scope of the interdiction referred to in paragraph 27 (c) of the report would be appreciated. He was surprised that it was simply "normal practice" to go directly to a lawyer rather than an entitlement. Information should also be provided on whether there were provisions guaranteeing that an accused person did not have to testify at his or her trial.

17. The State's obligations under article 3 of the Convention did not seem to figure in Malta's internal legislation, which he would like to be explained. With regard to the case mentioned by the Alternate Country Rapporteur, information on the administrative procedure governing consideration of requests for asylum would be welcome.

18. Finally, he congratulated Malta on its declarations under articles 21 and 22 of the Convention and on the fact that it had entered no reservations to article 20.

19. Mr. SØRENSEN endorsed the comments and questions of previous speakers. As a doctor, he requested assurance that detention in mental hospitals, as mentioned in paragraph 50 of the report, was strictly in accordance with the conditions usually applied for such internment and asked whether the Mental Health Act also covered prisoners.

20. Although there were no victims of torture in Malta, it was quite possible that someone who had been tortured elsewhere would go to Malta. Therefore, was there a rehabilitation programme for victims of torture? It would be desirable for the Government of Malta to make a contribution, however token, to the United Nations Voluntary Fund for Victims of Torture, a gesture which would sit well with Malta's systematic commitment to human rights.

21. Mr. REGMI asked on what grounds prisoners could be placed in solitary confinement and whether they could be visited by a relation or their lawyer. Under article 10 of the Convention, the training of law enforcement officers, either military or civilian, was very important, as was the training of all other persons involved in the custody, questioning or treatment of a person who had been arrested, detained or imprisoned. Yet the report did not mention the training of medical staff or public officials. With regard to the application of article 14 of the Convention, was the right to damages and compensation for victims of torture guaranteed by law?

22. Mr. PIKIS welcomed Malta's very sound legislative basis for implementing the Convention. It was not clear from paragraph 18 of the report whether an arrest warrant was needed before an arrest could be made, or whether prisoners had the right to remain silent and not to testify against themselves. The order of a superior officer could not be invoked before a court in defence of someone guilty of torture, but could it be used in an administrative context? Finally, could someone with a mental disorder be committed without an arrest warrant, simply on the basis of an administrative order? With regard to the prison system, information on the material conditions of detention in cells would be welcome.

23. He also wanted to know how possible conflicts between international treaties that Malta had ratified and national legislation were resolved.

24. Mr. CAMARA welcomed the promulgation of article 139 of the Penal Code, which signified progress in the implementation of the Convention. The provision applied at all times and no exception such as an order from a superior officer had been included (para. 46 of the report). More precise information was needed on whether there was a specific provision stating that orders from a superior officer could not be invoked. Could compensation for torture be provided on the basis of particular legislation or only under general legislation?

25. Mr. GONZÁLEZ POBLETE endorsed the questions put by members of the Committee who had spoken before him. He congratulated the delegation of Malta on its excellent report and the country's authorities on the way in which they guaranteed the protection of their citizens.

26. Mr. ZUPANCIC asked whether Malta had a procedure to ensure expeditious trials in view of a surprising case in which a verdict had been handed down in March 1993, although the events had taken place in July 1980. Undoubtedly, Malta applied the general rule that a law should not be retroactive unless it was to the benefit of the accused, and he wondered what punishment a person found guilty of torture would have received if new article 139 A of the Penal Code, which expressly punished torture, had been applied.

27. The CHAIRMAN endorsed the favourable comments made by the other members of the Committee. It was rare that a country whose legislation included a definition of torture that was totally in line with article 1 of the Convention came before the Committee. However, article 139 A of the Penal Code could be improved further if it expressly provided that an act was also classed as criminal if the guilty party was acting "at the instigation of or with the consent or acquiescence of" a public official.

28. Mr. QUINTANO (Malta) thanked the members of the Committee for their positive comments and assured them that he would do his best to reply to all the questions raised.

29. The delegation of Malta withdrew.

The public part of the meeting rose at 11.15 a.m.